

**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK**

In re:

VERNON 4540 REALTY, LLC,

Debtor.

Chapter 11

Case No. 20-22919 (SHL)

BRENT CARRIER,

Plaintiff,

v.

CSC 4540, LLC, 45-50 VERNON LP,
JSMB 4540 LLC, JSMB 4540 MM LLC,
AND VERNON 4540 REALTY, LLC

Defendants.

Adversary Proceeding

Case No. 21-07032 (SHL)

ORDER DISMISSING AND CLOSING THE ADVERSARY PROCEEDING

WHEREAS, on July 27, 2021, Brent Carrier (“**Plaintiff**”) commenced the above-captioned adversary proceeding (“**Adversary Proceeding**”) by filing a complaint (“**Complaint**”) against CSC 4540, LLC, 45-50 Vernon LP, JSMB 4540 LLC, JSMB 4540 MM LLC, and Vernon 4540 Realty LLC (collectively, “**Defendants**”) seeking declaratory judgment that Plaintiff has the right to receive and retain its 100% allocation of certain Brownfield Tax Credits¹; and

WHEREAS, Defendants filed their *Motion of Defendants CSC 4540, LLC, 45-50 Vernon LP, JSMB 4540 LLC and JSMB 4540 MM LLC to Dismiss Adversary*

¹ As defined in the Complaint.

Proceeding (together with any related pleadings by Defendants, (“**Dismissal Motion**”) [Adv. Proc. Docket No. 12], and Plaintiff filed objections and responses (together, “**Objection**”) [Adv. Proc. Docket Nos. 22–23]; and

WHEREAS, the issues in this Adversary Proceeding are substantially similar to or the same as issues raised in a related adversary proceeding pending at 20-07020 (“**Related AP**”) in which this Court has already ruled, which ruling was appealed to the District Court for the Southern District of New York (“**Appeal**”); and

WHEREAS, while the Appeal was pending, at a hearing on December 1, 2021 to consider Defendants’ Dismissal Motion (“**December 1st Hearing**”), this Court deferred consideration of the Dismissal Motion until after the District Court ruled on the Appeal, holding:

. . . if the [District] court denied the appeal [in the Related AP], it would appear clear to me that at that point, the summary judgment order is *res judicata* and that the determination as to the right to the refund in the Court’s summary judgment order would be binding on the parties, including the debtor, as well as, of course, Mr. Carrier.

[Adv. Proc. Docket No. 26, p.32:4–9], and

I will defer consideration of the [Dismissal] motion. Although, again, it appears clear to me that if in fact the appeal is denied, the motion would be granted on substantive grounds of either *res judicata* in all likelihood or with respect to related claims possibly asserted in the complaint or breach of contract or breach of fiduciary duty, on the basis of collateral estoppel given that the important legal fact will be the Court’s prior determination that the tax refund to Mr. Carrier is property of the debtor’s estate.

[Adv. Proc. Docket No. 26, p.33:14–22]; and

WHEREAS, on June 13, 2022, the District Court affirmed the Bankruptcy Court’s orders in the Appeal (“**Appellate Order**”) [Related AP Docket No. 144]; and

WHEREAS, the relief sought by Plaintiffs in the Adversary Proceeding was also resolved by rulings of this Court on the record and in orders, including but not limited to, this Court’s *Order Granting Plaintiffs’ Motion for Summary Judgment and Directing Appointment of an Examiner with Powers Pursuant to 11 U.S.C. §1104(c)* [Related AP Docket No. 60] dated March 29, 2021, *Order Denying Defendant Brent Carrier’s Motions to Vacate, Set Aside, Alter, Amend, or Reconsider the Court’s March 29, 2021 Order Granting Plaintiffs’ Motion for Summary Judgment and Directing Appointment of an Examiner with Powers Pursuant to 11 U.S.C. §1104(c)* [Related AP Docket No. 82] dated May 4, 2021, *Order Directing Brent Carrier to Execute and Submit the Refund Authorization to the New York State Department of Taxation and Finance for Deposit Into an Escrow Account Held by Examiner’s Counsel Pending Further Court Order* [Related AP Docket No. 137] dated January 5, 2022; and (d) this Court’s *Findings of Fact, Conclusions of Law, and Order Confirming Plan of Liquidation for Vernon 4540 Realty LLC Dated June 23, 2021* [Docket No. 72], as Amended [Docket No. 145] dated March 2, 2022 (the “**Confirmation Order**”); and

WHEREAS, Buchwald Capital Advisors LLC, is the Liquidating Trustee, as defined in the *Amended Combined Disclosure Statement and Chapter 11 Plan of Liquidation for Vernon 4540 Realty LLC* [Exhibit A to the Confirmation Order]; and

WHEREAS, the Brownfield Tax Credits have been recovered and distributed (subject to de minimis reserves for professional fees) by the Liquidating Trustee pursuant to the Plan, the causes of action in this Adversary Proceeding have been ruled on by this Court, the District Court has ruled on the appeal in the related AP,

and the period to appeal the District Court decision has passed, and all business in this Adversary Proceeding has been concluded or is otherwise moot.

NOW, THEREFORE, IT IS HEREBY

ORDERED, that the delayed granting of the Dismissal Motion is hereby ordered for the reasons set forth on the record at the December 1st Hearing and in the Appellate Order, and because the relief sought in the Complaint is moot, and the Objection and any other responses or objections, whether raised orally or in writing, are overruled; and it is further

ORDERED, that the Adversary Proceeding is dismissed with prejudice; and it is further

ORDERED, that the Adversary Proceeding may be closed by the Clerk of the Court.

Dated: July __, 2023
White Plains, New York

HONORABLE SEAN H. LANE
UNITED STATES BANKRUPTCY JUDGE